STATE OF MICHIGAN

COURT OF APPEALS

In re BRUCE D. CAMERON TRUST.

ROBERT IMHOFF,

Petitioner-Appellee,

v

JAMES VOORHEIS,

Respondent-Appellant,

and

DUNCAN J. CAMERON, SR., and NORMAN LEPAGE,

Respondents-Appellees,

and

DENNIS MANDO,

Respondent.

UNPUBLISHED
November 29, 2005

No. 257306
Oakland Probate Court
LC No. 03-290102-TV

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

In this dispute between remainder beneficiaries of the Bruce D. Cameron Trust regarding the proper distribution of trust assets, respondent-appellant, James Voorheis, appeals as of right from the probate court's order denying his motion for summary disposition under MCR 2.116(C)(10) and granting the cross-motion for summary disposition brought by respondent-appellee, Duncan J. Cameron, Sr., pursuant to MCR 2.116(C)(8) and (10). We affirm.

We review de novo the probate court's decision regarding respondent Voorheis' and Duncan Cameron's motions for summary disposition. *In re Handelsman*, 266 Mich App 433, 435; 702 NW2d 641 (2005). Questions of statutory construction and the interpretation of

unambiguous language used in a trust instrument are also reviewed de novo. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005).

Although the probate court stated that it granted Duncan Cameron's motion under both MCR 2.116(C)(8) and (10), a motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. MCR 2.116(G)(5); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Because the probate court considered evidence beyond the pleadings and found no genuine issue of material fact, we limit our review to the proper subrule, which is MCR 2.116(C)(10). *Id*. at 338. In reviewing a motion under this subrule, the proffered evidence is considered only to the extent that it is substantively admissible. MCR 2.116(G)(6); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163-164; 645 NW2d 643 (2002). The moving party is entitled to judgment as a matter of law if the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 164.

Examining the parties' evidence in a light most favorable to respondent Voorheis, *Nastal v Henderson & Assocs Investigations, Inc*, 471 Mich 712, 721; 691 NW2d 1 (2005), we hold that the probate court did not err by enforcing the handwritten distribution scheme on the first amendment to the Cameron Trust.

We agree with respondent Voorheis that the same rules of construction apply to wills and trust instruments. *In re Reisman Estate*, *supra* at 527. Rules for determining and construing ambiguity in a contract are also applied. See *In re Kremlick Estate*, 417 Mich 237, 241; 331 NW2d 228 (1983) (applying contract rules to wills). Hence, as a threshold matter, summary disposition is appropriate under MCR 2.116(C)(10) only if a written instrument is unambiguous. See *SSC Assocs Ltd Partnership v Gen Retirement Sys of Detroit*, 192 Mich App 360, 363; 480 NW2d 275 (1991) (intent of parties to contract). If a written instrument is ambiguous, its meaning presents a question of fact for the trier of fact. See *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003) (meaning of contract).

Nonetheless, we reject respondent Voorheis' claim that the clear and convincing evidence standard prescribed in MCL 700.2503 of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*., applies to the Cameron Trust. That statute applies only to wills. Where statutory language is unambiguous, it must be applied as written. *In re Reisman Estate*, *supra* at 522. The terms "will" and "trust" have distinct statutory definitions under the EPIC. See MCL 700.1107(m) (trust "includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created . . . .") and MCL 700.1108(b) (will "includes, but is not limited to, a codicil and a testamentary instrument that appoints a personal representative, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to the decedent's property that is passing by interstate succession"). The Cameron Trust is an express inter vivos trust for the decedent's benefit, with five named remainder beneficiaries having vested interests subject to defeasance. See *In re Childress Trust*, 194 Mich App 319, 322-323; 486 NW2d 141 (1992). Because the Cameron Trust is not a will, MCL 700.2503 does not apply.

Also, we reject respondent Voorheis' claim that the Cameron Trust, as amended, is patently ambiguous. Because the Cameron Trust must be reviewed as a whole to determine its meaning, we consider the first amendment, and the decedent's handwritten markings thereon, together as a single instrument to determine if an ambiguity exists. *In re Charlton Estate*, 9

Mich App 625, 634; 157 NW2d 821 (1968). "A patent ambiguity exists if an uncertainty concerning the meaning appears on the face of the instrument and arises from the use of defective, obscure, or insensible language." *In re Woodworth Trust*, 196 Mich App 326, 327-328; 492 NW2d 818 (1992). It is clear from the face of the first amendment to the trust instrument that the decedent made handwritten changes to both the designated successor trustee, substituting Robert Imhoff for Voorheis, and the distribution scheme for the five named remainder beneficiaries, reducing Voorheis' distribution and increasing the distribution of each of the other four named remainder beneficiaries.

We agree with the probate court's determination that the decedent's failure to draw a line through the typed distribution percentages on the first amendment did not create a patent ambiguity. The placement of the handwritten changes and the decedent's undertaking to initial each change reasonably admits to but one interpretation. The decedent intended to change each named remainder beneficiary's distribution percentage to the amount written above the typewritten percentage. The fact that the decedent failed to identify a remainder beneficiary for one percent of the trust assets does not create a patent ambiguity.

In support of his argument that an ambiguity exists, respondent Voorheis asserts that the decedent had a pattern of conduct relative to trust instruments. We consider this argument to determine whether a latent ambiguity has been shown. "A latent ambiguity exists where the language and its meaning is clear, but some extrinsic fact creates the possibility of more than one meaning." *In re Woodworth Trust*, *supra* at 328. But the only pattern of conduct shown by respondent Voorheis is a particularized method of dealing with a client's trust instruments by the decedent's attorney. Neither the decedent's use of his attorney to prepare the first amendment to his trust, nor his attorney's practice of maintaining duplicate original copies of trust instruments gives rise to the possibility of more than one meaning for the decedent's handwritten markings on the first amendment. The decedent was authorized under § 1.3 of the trust instrument to amend the distribution percentage for each beneficiary. The trust instrument did not require any delivery to or involvement of an attorney for an amendment. The probate court correctly construed the handwritten markings as unambiguously changing the distribution scheme to divide 99 percent of the net trust assets between the five named remainder beneficiaries.

Whether the decedent's failure to designate a remainder beneficiary for the other one percent of net trust assets renders the entire distribution scheme invalid presents a distinct question. Respondent Voorheis has failed to support his position that the entire distribution scheme was thereby rendered invalid with citation to proper authority. An appellant's arguments must be supported by appropriate authority or policy. *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). A mere assertion of position is insufficient to bring an issue before an appellate court. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

In particular, respondent Voorheis does not identify any particular statute of frauds applicable to the Cameron Trust assets. The statute of frauds at issue in *Kerschensteiner v Northern Michigan Land Co*, 244 Mich 403; 221 NW 322 (1928), applies to estates and interests in land. See MCL 566.106. Even if we were to assume that MCL 566.106 applied to the Cameron Trust, the statute is concerned with the form for creating the estate or interest in land. *Zurcher v Herveat*, 238 Mich App 267, 277; 605 NW2d 329 (1999). Although a writing and proper signature are essential elements for satisfying the statute of frauds, a signature by initials

is sufficient to satisfy the statute. *Id*.; see, also, *Archbold v Industrial Land Co*, 264 Mich 289; 249 NW 858 (1933). Therefore, the written distributions to the remainder beneficiaries, which were initialed by the decedent, satisfies the statute of frauds.

We also conclude that respondent Voorheis failed to support his claim that a valid trust requires the designation of remainder beneficiaries for 100 percent of trust assets. Although an express trust may only be created in the manner prescribed by statute, *McQuillan v Ayer*, 189 Mich 566; 155 NW 599 (1915), the uses and trusts act, MCL 555.1 *et seq*. does not require that a settlor dispose of 100 percent of an asset in an express trust. MCL 555.11 provides that an express trust may be created "[f]or the beneficial interest of any person or persons where such trust is fully expressed and clearly defined upon the face of the instrument creating it . . . ," but MCL 555.18 clearly contemplates that there may be undisposed assets that shall remain in or revert to the settlor. Nothing in *Kerschensteiner*, *supra*, *Renz v Stoll*, 94 Mich 377; 54 NW 276 (1892), or *Brooks v Gillow*, 352 Mich 189; 89 NW2d 457 (1958), supports the proposition that a trust instrument is rendered invalid if the settlor fails to designate beneficiaries for 100 percent of trust assets.

Even if we were to assume that the decedent should have designated a remainder beneficiary for the remaining one percent of the trust assets, the settlor's intent should be carried out as far as legally possible. *Loomis v Laramie*, 286 Mich 707; 282 NW 876 (1938). Because the decedent's handwritten changes to the distribution percentage for each of the five named remainder beneficiaries is unambiguous, and respondent Voorheis has not established any basis for invalidating those changes, we uphold the probate court's decision to enforce the changes.

Finally, respondent Voorheis has not established any basis for disturbing the probate court's determination that the undesignated one percent should pass to Duncan Cameron, as the decedent's heir. Because the trust does not direct the distribution of one percent of net trust assets to a remainder beneficiary, the probate court properly looked to MCL 555.18 to establish a trust in favor of Duncan Cameron, as the decedent's heir at law. The one percent remainder interest in trust assets reverts to the decedent's heir, as a legal estate, because it was neither embraced nor disposed of by the express trust. MCL 555.18. In substance, however, a resulting trust against the trustee, and not an express trust, arises from the reversion. See generally *Thompson v Stehle*, 367 Mich 284, 296-297; 116 NW2d 900 (1962). "Unlike the express trust, which arises from a transferor's manifestation of intention to create it, a resulting trust arises from an intention that is legally attributed to a transferor based on the nature of the transaction, rather than manifested intent." 1 Restatement Trusts, 3d, p 86 (comment a).

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood